

MINUTES OF THE COMMISSION FOR HUMAN RIGHTS

DECEMBER 5, 2008

A meeting of the Commission for Human Rights was held in the agency conference room on Friday, December 5, 2008. Present at the meeting were Camille Vella-Wilkinson and Nancy Kolman Ventrone. Absent were Commissioners Alberto Aponte Cardona, Iraida Williams, Dr. John Susa and Alton W. Wiley, Jr. Commissioner Vella-Wilkinson called the meeting to order at 9:15 a.m. Commissioner Rochelle Lee arrived at 10:15a.m.

The Commission meeting was informational before Commissioner Lee' s arrival.

The minutes for October 31, 2008 were not approved as there was no quorum.

Status Report: Michael D. Évora, Executive Director

A written report was handed out by Cynthia Hiatt, Legal Counsel.

All new information is in bold print.

Personnel: At 9:50 a.m. Commissioners Vella-Wilkinson and Kolman Ventrone voted to go into Executive Session under R.I.G.L. Section 42-46-5(a)(1) which provides that a public body may hold a meeting

closed to the public for the following purposes.

(1) Any discussions of the job performance, character, or physical or mental health of a person or persons provided that such person or persons affected shall have been notified in advance in writing and advised that they may require that the discussion be held at an open meeting.

Commissioner Meeting -2- December 5, 2008

Commissioner Vella-Wilkinson made a motion that: The Commissioners approve requesting the Personnel Administrator to extend more than minus eight (-80) sick hours to staff member Susan Gardner, should be necessary in the judgment of the Executive Director, Michael Evora. The motion was seconded by Commissioner Lee and carried.

It was noted for the record that the person to be discussed had been so notified and does not require that the discussion be held at an open meeting. At 10:15 a.m., Commissioner Lee joined the Executive Session. At 10:30 a.m., Commissioner Lee moved to return to public session, Commissioner Kolman Ventrone seconded the motion and the motion carried.

Case Production Report – Attached

Aged Case Report - Attached

Outreach Report - Attached.

Tina Christy reported on her outreach and education training activities. Should there be a fee or charge for trainings for the private sector? Ms. Christy stressed the need for Power Point training for herself and other staff members. The Commissioners and Cynthia Hiatt raised a number of concerns that will be discussed and researched before a decision can be made. The Commissioners did agree that we should charge the private sector and non-profit organizations the cost for copying pamphlets and other handouts.

STATUS REPORT - COMMISSIONERS-

GENERAL STATUS: No report at this time

OUTREACH: No report at this time

STATUS REPORT - LEGAL COUNSEL, by Cynthia M. Hiatt and Francis Gaschen

LITIGATION: Report attached.

LEGISLATION: No discussion at this time.

REGULATIONS: No discussion at this time.

HEARING SCHEDULE: Discussed

DECISIONS: No discussion at this time.

The meeting adjourned at 11:05 a.m. The next regular meeting of the Commission is scheduled for Friday, January 30, 2009 at 9:00 am.

Respectfully Submitted,

**Michael D. Évora
Executive Director**

Notes taken by: B. Ross

**EXECUTIVE DIRECTOR'S
REPORT TO COMMISSIONERS
DECEMBER 5, 2008**

I. BUDGET

S = State/General Revenue; F = Federal (EEOC/HUD); T = Total

	FY 2009	FY 2009	FY 2009	FY 2010
	(Gov. Rec.)	(Enacted)	(Rev. Req.)	Request
S	991,659	991,659	991,659	868,444
F	391,309	391,309	403,813	406,615
T	1,382,968	1,382,968	1,395,472	1,275.059

On September 23, the Commission's Revised FY 2009 and FY 2010 Budget Requests were submitted to the Governor. A shortfall of \$82,643 in federal revenue is anticipated for FY 2009; consultation with our Budget Analyst reveals that this anticipated shortfall is likely due to the "scooping" of excess federal revenue at the end of FY 2008 to cover general revenue shortfalls. The Commission has requested a general revenue supplemental appropriation in this amount for FY 09.

The FY 2010 Request complies with the Governor's directive that general revenue funds be decreased by eight percent (8%), to a target

amount of \$868,444. This amount is reached using the Budget Office's calculated current service cost for FY 2010 of \$943,961; in reality, to achieve the target amount, the agency must reduce its true current service cost for FY 2010 of \$1,008,196 by nearly 14%). In order to meet this target, the Commission would have to lay off two investigative staff members, or an equivalent thereof. We await word as to whether the Budget Office will recommend, and whether the Governor will adopt, the general revenue reduction for FY 2010.

II. FEDERAL CONTRACTS

EEOC – For federal FY 2009 (ending 9/30/09), according to EEOC Project Director Marlene Toribio, we have closed 33 co-filed cases. Our 2009 EEOC contract amount is not yet known.

HUD – For FY 09, according to HUD Project Director Angela Lovegrove, we have taken in 28 new housing charges, 25 of which are co-filed with HUD. Within this same time period, we have processed 28 housing charges, 25 of which were co-filed with HUD.

III. PERSONNEL

Executive Session

IV. OUTREACH – Refer to attached report

On July 15, Tina Christy, Senior Compliance Officer, and Susan Pracht, Investigator, sent out letters to over 250 city and state departments and agencies offering information on the Commission's fair employment/fair housing education and outreach program. Several outreaches have been scheduled in response to this mailing.

¶Charging Private Sector for Training (TMC) – Tina Christy has been conducting most of the Commission's Outreach/Education. She will be present at the meeting and would like to discuss with Commissioners and Legal Counsel the idea of charging a fee for private sector O&E.

V. GENERAL STATUS

¶Meetings with staff members – I continue to meet with individual investigative staff members on a monthly basis to monitor case production.

¶Case Closures – Refer to attached report.

¶Aged Cases – Refer to attached report. Progress continues to be made on decreasing the aged caseload. The Commission successfully reduced the aged caseload by 50% in federal FY 2008 (from 4 to 2 cases). For the first time in recent history, the Commission entered a new federal fiscal year without adding any

aged cases to the existing number.

●Overall Case Inventory – The Commission had over 1000 cases in its inventory at the end of FY 98. We ended FY 08 with approx. 370 cases in inventory. As of 12/1/08, we had a total of 348 cases in inventory; 10 of those cases were pending assignment.

●Annual Report – A draft of the Annual Report is being circulated among staff for review. The goal is to have the final draft to the printer by mid-December.

●Arbitration – On April 30, an arbitration hearing was held on the union grievance in respect to the nonpayment of union dues by Susan Pracht and Jason Flanders during the period in which they served as Interns (before they were employed by the Commission). The Arbitrator issued his decision on October 15. He found in favor of the Union, concluding that Susan and Jason ceased to be “interns” after they ceased to be college students, and that their status at the Commission prior to their hire as employees was more akin to temporary employees. As a result of the decision, “[t]he State will pay the Union “... either union dues or an agency service fee ...” whichever is less, for both individuals for said periods [post student-internship and pre-employment].” The appeal period has not yet expired.

Respectfully submitted,

Michael D. Évora

Executive Director

Attachments

To: Commissioners

From: Cynthia Hiatt and Frank Gaschen, Legal Counsels

Re: Litigation

Date: December 5, 2008

Recent developments are in bold.

Aquidneck Island v. RICHR, et al.

This suit was brought by the plaintiff against multiple parties, alleging that liens have been placed on its property improperly. All liens were against Norman Cardinale not Aquidneck. Case is moot now.

Atturio et al v. Évora

This is an appeal of a Commission decision that granted in part and denied in part a motion to quash a Commission subpoena. A briefing schedule had been established with the Superior Court. The respondents' brief was filed on October 6, 2008. The Commission brief was timely filed and the complainants have until today to file a reply brief if they want to.

Babbitt v. Crescent Park Manor, et al.

The Commission intervened as a party plaintiff in this case. Discovery

is on going. I called both attorneys for an update on this case. Received no response from either; court docket indicates nothing has been filed on case in a year. A discovery deposition is scheduled.

Bagnall v. RICHR and WLWC et al.

The complainant appealed the Commission Decision and Order. The Commission filed the administrative record on April 12, 2006. On April 22, 2008, the complainant's attorney filed his brief. The parties had filed a stipulation that provides that the Commission and the respondent will file our briefs on or before August 29, 2008. The Commission's Brief was filed on August 27, 2008. WLWC and Ms. Bagnall signed a stipulation to extend the time for WLWC to file its brief to October 31, 2008. Another stipulation has extended the time for WLWC to file its brief to November 30, 2008.

Gaffney v Town of Cumberland et al

The respondent appealed the Commission decision. In November, 2007, Judge Savage remanded the Commission Decision for the Commission to determine how the Commission would evaluate the evidence, given the conclusions reached in her decision. Judge Savage also asked the Commission to re-assess its Order. Justice Savage suggested that the parties consider whether Mrs. Gaffney should re-apply for subdivision of her property, following the proper procedure. Counsel wrote to the attorneys for the parties, given them several alternative steps and asked them how they would like to proceed. The respondent's attorney said that it would like Mrs.

Gaffney to re-apply for subdivision under certain conditions. The complainant's attorneys, for various reasons, did not respond to the Commission for some time. On May 27, 2008, the Commission received a copy of a letter from the complainant's attorney to the respondents' attorney. The letter was a settlement proposal from Mrs. Gaffney. Settlement was not effected. Mrs. Gaffney's attorney indicated that she might withdraw as counsel. On September 2, 2008, Commission Counsel asked her for a formal decision on whether she will withdraw and she said that she would notify the Commission within two weeks. The Commission did not receive word from the complainant's counsel. On October 24, 2008, Commission Counsel notified the parties that on January 5, 2009, the Commission would commence reconsideration of the decision in light of Justice Savage's decision. The letter provided that the parties' counsel could submit memoranda on reconsideration on or before January 5, 2009. On October 27, 2008, the complainant's son informed the Commission of his mother's medical condition. On October 27, 2008, Commission Counsel confirmed that complainant's attorney was still representing the complainant, however on October 30, 2008, counsel's office indicated that they may file a motion to withdraw and a motion for extension of time. The Commission has not received a motion to withdraw from the complainant's counsel. As requested, respondent's counsel sent in the relevant ordinances and regulations in effect at the time in question and in effect at the present time.

J.J. Gregory and Sons v. RI Commission for Human Rights and

Brenda Zeigler

The Commission found that J.J. Gregory and Sons discriminated against Brenda Zeigler because of her sex. J.J. Gregory and Sons filed an administrative appeal. Its appeal was amended to include an appeal of the Commission's Decision on Damages and Attorney's Fees. The Commission filed the administrative record with the Court on February 14, 2008. The filed a stipulation, the respondent's brief is due June 2, 2008 and the brief of the complainant and the Commission is due on July 1, 2008. The respondents' brief has not yet been filed. Respondents' counsel expects that their brief will be filed shortly. He will circulate a new stipulation relating to the due date for the briefs of the Commission and the complainant which will give us sixty (60) days to file the brief after his brief is filed. On September 2, 2008, the complainant wrote a letter to the respondent's counsel asking why the filing of the respondent's Brief has been delayed. On October 28, 2008, Commission counsel called both attorneys and left messages to call back. The complainant's counsel called back and left a message. He said that the respondent's counsel has enlisted another attorney to write the brief. When complainant's counsel saw the attorney charged with writing the brief, several weeks ago, he said that he would file the brief within the week. The respondent's attorney called and said the brief would be filed this week. The complainant made a motion to dismiss the appeal based on the respondent's failure to file its brief as stipulated. The hearing date was November 19, 2008. Counsel has not yet been informed of the results of the hearing.

King v. City of Providence Police Dept.

This is a case in which the Commission issued a decision finding that the City of Providence had denied Mr. King a position as a police officer because of his age. The Commission had not yet determined damages when the FUD's decision came down, so the Commission decision was not final and the respondent had the opportunity to have the case heard in Superior Court. The respondent elected to have the matter heard before the Superior Court. Ms. Hiatt has been subpoenaed to testify at the trial. The trial had been rescheduled to late September. The plaintiff was going to request another continuance; it has been granted. The complainant's attorney has told the Commission that there is a calendar call on September 14, 2007 and that the trial may be scheduled in September or October. Counsel now says that the trial will be scheduled at a later date. On October 23, 2007, Counsel for Mr. King said that the trial would probably take place during the week of January 21. Counsel Hiatt is under subpoena for the trial. The trial will not be held during the week of April 28; a new date has been set for the week of Feb. 2, 2009.

Laboy v. Stat Health Services

Counsel is trying to locate respondent's officers in order to ensure compliance with the Commission Decision and Order.

MHRH v. Rhode Island Commission for Human Rights and the Estate of Dr. John Satti

MHRH has appealed the Commission decision that MHRH retaliated

against Dr. Satti and discriminated against him on the basis of his age. The Commission will file the record of the Commission proceeding. MHRH filed its Brief on August 7, 2008. On October 21, 2008, the Commission filed the administrative record.

RICHR (Figueroa) v. Valley Affordable Housing, et al.

Respondents elected and did not return call to discuss settlement. Suit on behalf of the Figueras was filed against two respondents in Providence County Superior Court. Service has been effectuated on one respondent.

RICHR (Martin) v. Cardinale, et al.

A complaint alleging a transfer of real estate in violation of the Uniform Fraudulent Transfers Act was filed against Norman Cardinale, Mary Cardinale, Newport Developments LLC, AEGIS Lending and MERS. Suit against Aegis and Mers was voluntarily dismissed. Default was entered against all remaining defendants but later removed by Court. Motions to default have been granted. Motions for Entry of Default will be filed shortly.

RICHR (Martin) v. Cardinale, et al.

A complaint alleging a transfer of partnership interests in real estate in violation of the Uniform Fraudulent Transfers Act has been filed against defendants. Discovery commenced. Motions to compel will be filed.

RICHR (Lovegrove) v. Escolastico

RI judgment was obtained and sent to FL lawyer for collection. Action brought to foreclose mortgage on property Escolastico owns in FL. Waiting for Lovegrove to forward funds to FL counsel to begin Supplementary Proceedings against Escolastico.

RICHR (Morin) v. Teofilo Silva, et al.

A complaint for enforcement was filed on 3-24-05. Service of the complaint will be made once respondent can be located.

RICHR (Robinson) v. Geruso, Flagship Management, et al.

A complaint against six defendants has been filed in Superior Court alleging racial discrimination in a failure to rent case that went probable cause. The complainant elected. The respondents answered the complaint. Their attorney never responded to an offer to discuss settlement so discovery will proceed.

RICHR (Switzer) v. Principe, et al.

The respondents elected in this housing case that went probable cause on the basis of familial discrimination. The file has been copied and given to the AG to review. The attorney for the respondent and I have not had an opportunity to discuss an offer to settle. If we don't settle, suit will be brought either in federal or state court before the middle of January, 2009.

RICHR (Zeigler) v. Laura Sitrin, Finance Dir. of Newport

Case resolved. Commission must annually monitor City training. Notice sent to the city regarding the annual training. Training completed for 2007.

Subpoena in investigative case

The Petitioner in a Workers' Compensation case subpoenaed the Commission's file in an open case in which she alleges employment discrimination. The Commission filed a motion to quash on Nov. 12, the hearing was held Nov. 13 and the Judge agreed with the Commission position and only required the Commission to produce two charges. On the date the charges were due, the parties resolved the Workers' Compensation case.

Tucker v. Blue Cross

The complainant filed an administrative appeal of the Commission's finding of no probable cause. The administrative record was filed in Court. Nothing has been done since appeal filed in 2004.